88-1352

Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

RATINAVELU RAMACHANDRAN
Petitioner

v.

UNITED STATES POSTAL SERVICE
Respondent

FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION

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PRO SE Petitioner
Telephone: none

QUESTIONS PRESENTED FOR REVIEW 1/

I. Whether a "motion to dismiss" is a responsive pleading?

II. Whether United States Postal Service can be sued in its official name?

1/ This Petition is based on Petitioner Ramachandran's U.S. Appeal Court briefs (Opening Brief, Excerpts of Record, Reply Brief, and Petition for Rehearing with Suggestion for Rehearing En Banc). Findings, opinions, and orders of the lower courts and administrative agencies, but not the above filings, are attached to the Appendix to this Petition separated by a blue sheet at the back of this petition in single volume.

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INTRODUCTION

In 1982, United States Postal Service called applications from 1982 and Recent Graduates to fill several Industrial Engineer positions in several geographical locations in the Western Region. (underline in original). Then 49 years old Petitioner Ramachandran applied. Postal Service rejected his application saying that the announcement was for internal use only to fill a single Industrial Engineer position.

Ramachandran, dissatisfied with that response, appealed to the Postal Service's own Equal Employment Opportunity Office,

under adverse conditions. That office rejected his complaint on the ground that Ramachandran failed to seek EEO counselling in timely manner. Ramachandran appealed to the Equal Employment Opportunity Commission (EEOC). EEOC also affirmed Postal Service "untimely" decision. Petitioner Ramachandran, proceeding pro se, filed a complaint with federal district court. The district court dismissed the complaint with prejudice for naming the United States Postal Service as defendant instead of Postmaster General. On further appeal, U.S. Court of Appeal for Ninth Circuit affirmed the District Court's dismissal, on the same ground, and, also, rejected Ramachandran's timely petition for "rehearing with suggestion for rehearing en banc."

Ramachandran, with this Petition to the U.S. Supreme Court seeks answers to two questions set forth below, which two questions raised in his "request for rehearing

with suggestion for rehearing en banc," the Ninth Circuit Court of Appeals ignored or failed to discuss.

QUESTIONS FOR REVIEW

I. Whether a "motion for summary judgment" is responsive pleading?

II. Whether United States Postal Service can be sued in its official name?

OPINION BELOW

The memorandum disposition of the U.S. Court of Appeals for the Ninth Circuit (Appeal Court No. 87-6028) presided by Hon. BROWNING, CJ, Hon. HUG and Beezer, Circuit Judges, AFFIRMED the District Court's dismissal order. The disposition, filed on May 26, 1988, was not published as mandated by the Court, and is reproduced in the Appendix at page A1.

A timely filed petition to the U.S. Court of Appeals for the Ninth Circuit for "Rehearing with Suggestion for Rehearing En Banc" was denied with Order filed on September 23, 1988. The order was not

published as mandated, and is reproduced in the Appendix at page A3.

The U.S. District Court Order (No.CV-86-7960) presided by Hon. KELLER, District Judge, Central District of California, dismissed Petitioner Ramachandran complaint for naming the United States Postal Service as defendant. District Court Order was entered on April 17, 1988. Petitioner is unaware whether or not the Order was reported. It is reproduced in the Appendix at A4.

The U.S. Equal Employment Opportunity Commission (EEOC) affirmed Postal Service's rejection of Ramachandran's discrimination charge in the EEOC's Decision issued on August 2x, 1986 (exact day not visible), and attached a "Statement of Appellant's Rights - Notice of Right to File a Civil Action." The EEOC's Decision and the attachment to decision are reproduced in the Appendix at page A8 and A10 respectively. United States Postal Service

rejected Ramachandran's employment discrimination complaint on the ground, as it put it, that Ramachandran failed to seek Postal Service's EEO counselling within the timeframe of the EEOC complaint processing regulations. The Postal Service's decision is reproduced in the Appendix at A13.

JURISDICTION

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. Section 1254(1), Title VII of the Civil Rights Act of 1964, (Title VII) 42 U.S.C. Sections 2000(e) et seq., as amended, Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. Sections 621 et seq., as amended, and 42 U.S.C. Sections 1981 (Equal Rights), 1983 (Civil Action for Deprivation of Rights) and Rule 15(c) of Federal Rules of Civil Procedure (F.R.-Civ.P.). And, this petition is timely in accordance with 28 U.S.C. Section 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. 39 U.S.C. Section 401 - General Powers of the Post Office. "The Postal Service shall have the following general powers 1. to sue and be sued in its official name(.)"

B. 29 C.F.R. Section 1625.4(a) (July 01, 1984 edition), which states, among others:

> When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "college student," "recent college graduate," "boy," "girl," or others of similar nature, such a term or phrase deters the employment of older persons and is in violation of the Act, unless one of the exceptions applies.

C. Rule 15(a) of F.R.Civ.P. which states, among others, "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served ..."

STATEMENT OF THE CASE

PROCEEDINGS PRIOR TO CIVIL ACTION 1/

1/ From pages 4 to 7 of Appellant's U.S. Appeal Court Brief.

A. Postal Service

Petitioner Ramachandran, (Plaintiff in the District Court, Appellant in the U.S. Appeal Court, now Petitioner in the U.S. Supreme Court) aged 55 now, native of Southern India and a naturalized citizen of the United States, holds a Bachelor of Engineering Degree from India, an American Master of Science Degree in Management, a Certificate in Computer Technology from Control Data Corporation Training School, New York, and has several years of engineering experience in Electrical, Mechanical and Civil engineering fields. In the last assignment, he served as Supervisory Highway Engineer with Bureau of Indian Affairs within the U.S. Department of the Interior from 1976 to 1981. In addition, Ramachandran also earned an eligible rating for Industrial Engineer position in level PES-19 in the Entrance Examination of the United States Postal Service in October 1975. (Appendix at A18).

Respondent Postal Service, (Defendant in the District Court, Appellee in the U.S. Appeal Court, now Respondent in the U.S. Supreme Court) in a public announcement, sought applications for several Industrial Engineers to be stationed at five major cities like, Long Beach, California; Phoenix, Arizona; Portland, Oregon; Salt Lake City, Utah; and Seattle, Washington, from "Industrial Engineers, 1982 and Recent Graduates." (underline in original). Petitioner Ramachandran submitted a Resume, as advised in the advertisement, to the Long - Beach postal facility with a note in Resume, in red pencil:

> I was in the waiting list of Industrial Engineers in level 18 in Oakland, CA post office during 1976. BIA position came, so I accepted (it). Thanks.

In subsequent correspondence, Petitioner Ramachandran corrected the level to PES-19 to reflect the correct level assigned by the Examining Unit. (Appendix at A18)

Michael E. Karlson, Director of Employee

and Labor Relations of the Management Sectional Center, Long Beach postal facility responded with a letter, dated October 15, 1982. He stated in that letter, "applications for the Industrial Engineer are only accepted from employees within the Postal Service."

Since Ramachandran responded to a public announcement calling for several Industrial Engineers, Michael Karlson's use of singular noun for single engineer position in his reply did not convince Ramachandran. Petitioner, therefore, sent another Resume with a covering letter, dated October 26, 1982, this time by official designation, to the Director, Employee and Labor Relations. In that letter, Ramachandran specifically stated that he was applying for one of the positions advertised, under Industrial Engineers, "1982 and Recent Graduates." Ramachandran's October 26th letter was never responded.

By letter January 31, 1983, Ramachandran

advised Director, Employee and Labor Relations about his change of address to the current address, and reminded Petitioner Ramachandran's Resume sent on October 26, 1982, which remained unresponded. The Director did not respond to this letter also, as well as a few subsequent reminders. 1/

After several local enquiries concerning appeal procedures with Postal Service, but without success, Ramachandran, finally,

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1/ When Ramachandran applied to Postal Service for this "Industrial Engineers, 1982 and Recent Graduates" position, he also applied for engineer positions with other federal employers, including some engineering positions with Postal Service. So, he was reminding all such employers about twice or thrice in yearly basis, some in 'positional basis' (where there was more than one position with an employer like Postal Service) and some in 'employer basis'. This position "1982 and Recent Graduates" was one of them in his annual reminder list.

Two of such reminders were resulted in civil suits, and now are pending in the U.S. Court of Appeals after having been unfairly dismissed in federal district courts.

contacted the Assistant Postmaster General, Employee Relations, stationed in Washington, D.C., headquarters office on January 14, 1985.

Next eight months Ramachandran was given run-arounds and was unable to file a formal complaint with EEO Office of Postal Service. There were 18 (actually there were 30 correspondences in all, as submitted in EEOC appeal, Ramachandran dropped some less significant ones such as reminders to various postal employees) correspondences between Ramachandran and various employees of the Postal Service, during that period, but no progress was made on filing the complaint. After eight months of futile struggle just to file a complaint, Ramachandran again contacted the Asst. Postmaster General for help on August 27, 1985, this time with some serious note that he would initiate a civil action, if no action were taken. The listing of the 18 contacts are listed in the Exhibit-18 which is part of

the Excerpts of Record submitted to the U.S. Court of Appeals. Finally, he filed it.

Thus, it took more than a year to file a formal complaint, after several run-arounds, even after contacting an official of no less than the rank of Asst. Postmaster General: From the date of contacting Asst. Postmaster General on January 14, 1985 to the date of filing formal complaint on February 05, 1986. Therefore, the requirement of "EEO counseling within 30-days of occurrence" became meaningless in this case because of the Postal Service's questionable EEO compliance procedure.

EEO Compliance Office the Postal Service issued its final decision on April 29, 1986, dismissing the complaint on the ground Ramachandran failed to obtain EEO counseling within 30 day period allowed. But its decision strayed everywhere except Ramachandran's complaint. In its decision Postal Service not even once mentioned

about the advertisement calling applications from "1982 AND RECENT GRADUATES." Whereas Ramachandran, aside from its usage in his several other correspondences to Postal Service, ALSO indicated clearly in Box 13 of Postal Service's EEO Charge form: "This complaint is for only "1982 and Recent Graduates" announcement seeking several engineers in Industrial engineer-(ing) in four different locations including Long Beach, California(,) without any room for doubt. Nevertheless, Postal Service never used the phrase, "1982 and Recent Graduates."

B. Equal Employment Opportunity Commission

On appeal to Equal Employment Opportunity Commission, EEOC also failed to consider (1) Postal Service's clear violation of 29 C.F.R. Section 1625.4(a) in calling applications from "1982 and Recent Graduates," and (2) Postal Service's failure to extend time limits to file a complaint

pursuant to 29 C.F.R. Sec. 1613.213(a)(4) for failing to provide assistance and guidance in filing the charge in timely manner, even when asked in writing.

DISTRICT COURT PROCEEDINGS 1/

Ramachandran, proceeding pro se, filed a civil action in the District Court on November 25, 1986, alleged employment discrimination in hiring in one of several positions advertised under "Industrial Engineers, 1982 and Recent Graduates," by the Defendant United States Postal Service, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000(e) et seq., as amended; Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. Section 621 et seq, as amended; and sought relief and damages under various laws and Constitution of the United States as set forth in the judicial complaint at pages one and two.

1/ Page of Appellant's Brief

Jurisdiction of the District Court was invoked under 28 U.S.C. Sections 1331 (Federal Question), 1339 (Postal Matters), and Postal Service Act, 39 U.S.C. Sections 401(1) and 409(a). Further jurisdiction was sought under Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The Postal Service moved to dismiss the Title VII and ADEA claims because Ramachandran had failed to exhaust administrative remedies in a timely manner and because he had not named a proper party defendant. The Postal Service asserted that causes of action based on Sections 1981 and 1983 should be dismissed because Title VII and the ADEA are exclusive remedies for Ramachandran's allegations.

Ramachandran responded to Postal Service's above motion with a motion, pursuant to Rule 15(a) of F.R.Civ.P., to amend defendant's name in Summons and Complaint. The District Court denied Ramachandran's

motion to amend, but granted Postal Service's motion to dismiss with prejudice, on April 13, 1987. The court found any amendment in adding the correct defendant would not relate back because the notice requirement of Rule 15(c) of Federal Rules of Civil Procedure was not met. Also, the court held that claims based on Sections 1981 and 1983 were precluded because Title VII and ADEA are the exclusive remedies for claims of race or national origin discrimination and age discrimination in federal employment.

APPELLATE REVIEW 1/

The District Court dismissed the Complaint on April 13, 1987, Ramachandran filed his Notice of Appeal, pursuant Rule 4 of F.R.App.P. to the U.S. Court of Appeals on June 10, 1987. Jurisdiction in the U.S. court of Appeals for the Ninth Circuit was invoked under 28 U.S.C. Section 1291, In his Appeal, Ramachandran raised the following two questions:

I. Did Plaintiff Ramachandran have a right to amend his complaint, at any time, prior to filing of a responsive pleading?

II. Did the District Court properly dismiss Plaintiff Ramachandran 's action under Title VII, ADEA, and 42 U.S.C. Sections 1981 and 1983, as being barred by the provisions of 42 U.S.C. Sec. 2000e-16(c) and Rule 15(c) of F.R.Civ.P.?

U.S. Court of Appeals for the Ninth Cir. affirmed District Court's dismissal decision for failing to name the Postmaster General as defendant. It partly touched the issue in II, and never discussed the issue in I, which was pivotal to decide whether or not Ramachandran has a case.

To find the answer for the issue I and to get complete answer to the issue II, Ramachandran raised the following two questions in his "Petition for Rehearing with suggestion for Rehearing en banc" to the U.S. Court of Appeals for the Ninth Circuit:

I. Whether a "motion for summary judgment" is a responsive pleading?

II. Whether United States Postal Service can be sued in its official name?

Appeal Court denied rehearing, and rejected suggestion for rehearing en banc. (Appendix at page A3). The same two issues are now the subject of this Petition to this Court, as provided at the outset.

REASONS FOR GRANTING THE WRIT

I. REFUSAL OF THE NINTH CIRCUIT TO DECIDE WHETHER "A MOTION TO DISMISS" IS A RESPONSIVE PLEADING CONFLICTS WITH NINTH CIRCUIT'S PREVIOUS DECISIONS

A. Ninth Circuit's Prior Decisions

Court of Appeals for the Ninth Circuit (Ninth Circuit) consistently held, in its several prior decisions, that "a motion to dismiss a complaint is not a responsive pleading." The Ninth Circuit stated in Mayes v. Leipziger, 729 F.2d 605 (9th Cir. 1984) that (i)n Breier v. Northern California Bowling Proprietors' Ass'n, 316 F.2d 787, 789 (9th Cir. 1963) we said,

A motion to dismiss is not a "respon-

> sive pleading" within the meaning of the Rule. Neither the filing nor granting of such a motion before answer terminates the right to amend; an order of dismissal denying leave to amend at that stage is improper... See also Wood v. Santa Barbara Chamber of Commerce, Inc., 705 F.2d 1515, 1520 (9th Cir. 1983) (right to amend terminated only by responsive pleading); Halet v. Wend Inv. Co., 672 F.2d 1305, 1310, n.5 (9th Cir. 1982)(same).

Ninth Circuit reached similar decisions in Nolen v. Fitzharris, 450 F.2d 958; in Worldwide Church of God Inc., v. State of California, 623 F.2d 613. Therefore, Petitioner is disturbed to note why Ninth Cir. changed its long standing holding of almost a quarter century, that a motion to dismiss a complaint is not a responsive pleading in this case alone.

B. Rule 15(a) Right

Ramachandran, based on the above prior holdings of Ninth Circuit, has a right to amend his judicial complaint in the lower court, in pursuant to Rule 15(a) of F.R.-Civ.P., which states in pertinent part:

> Amendments. A party may amend his pleading once as a matter of course at any

> time before responsive pleading is served or, if the pleading is the one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served.

C. Improper Reliance

Ninth Circuit relied for its present decision on Romain v. Shear, 799 F.2d 1416, 1419 (9th Cir. 1986)(per curiam); and Cooper v. United States Postal Service, 740 F.2d 714 (9th Cir.1984). (Appendix, page A2) But in both cases, the this Court's prior decisions holding "a motion to dismiss a complaint is not a responsive pleading" was not raised. Either this situation did not occur in those cases, or was overlooked even though those cases were represented by the lawyers.

Further, in Romain, Admiral Harold Shear, Administrator of the Department of Transportation was sued. He or Department of Transportation was not the proper defendant, because Admiral Shear or the Dep't of Transportation did not have legal entity

with the capacity to be used. (Schiavone v. Fortune 91 L.Ed. 2d 18, footnote 2). Therefore, 9th Circuit's reliance on Romain, is inappropriate in the instant case, since Respondent Postal Service, unlike Admiral Shear or Dep't of Transportation, has a separate legal entity with the capacity to be sued pursuant to 39 U.S.C. Sec. 401(1) which states, among others, "The Postal Service shall have the following powers (1) to sue and be sued in its official name(.))" (situation A - suing wrong defendant without legal entity to be sued)

In Cooper, supra, Karen Cooper was represented by lawyer, and it is unclear from the published report, whether or not there was a responsive pleading before the government moved to dismiss. If there was responsive pleading before government moved for dismissal, then Cooper does not have relevance with the instant case at bar in which Ramachandran contends that there was

no responsive pleading. (situation B - "nonrelevance")

On the contrary, if the government moved for dismissal without providing responsive pleading, it was the duty of Cooper to bring to the attention of the panel about long standing decision of the Circuit that a motion for dismissal is not a responsive pleading, and therefore Cooper was entitled to amend her complaint as a matter of law. If Cooper lost her case because of a legal error, Cooper cannot and should not become a precedent to the instant case at bar, because Ramachandran diligently advised the panel of Ninth Circuit's prior holdings in this respect. (Situation C - "Plaintiff's error.")

Therefore, Romain (plaintiff fault in suing wrong defendant - situation A), and Cooper (non-relevance - situation B), or (plaintiff's error in not following Ninth Circuit's precedents - situation C) should not become precedent to the instant case

wherein (1) defendant was properly named in accordance with the law, 39 U.S.C. Sec. 401(1); and, also, (2) the panel was advised about Ninth Circuit's long standing holding that a motion to dismiss is not a responsive pleading.

D. Judicial Swaying

Honorable BROWNING, one of the panel member who said in Breier v. Northern California Bowling Proprietors' Ass'n, 316 F.2d 787, 789 (9th Cir. 1963) that

> A motion to dismiss is not a "responsive pleading" within the meaning of the Rule. Neither the filing nor granting of such a motion before answer terminates the right to amend; an order of dismissal denying leave to amend at that stage is improper...

is also a member of the panel in the instant case, wherein he joined other panel members to deny to hear the rehearing and rejected the suggestion for rehearing en banc. The "denial" and/or the "rejection" of the request for rehearing to resolve the two questions posed in the "Request for Rehearing with Suggestion for Rehear-

ing En Banc), Ramachandran submits, amounts to an opinion that a "motion to dismiss IS a responsive pleading."

Ramachandran respectfully submits that the Court of Appeals, (more appropriately the "panel") is bound by the decisions of its Circuit unless they can be distinguished from the facts of the instant case. U.S. v. Olivares-Vega, 495 F.2d 827 (C.A.N.Y. 1974), Cert. denied 95 S.Ct. 494. 419 U.S. 1020, 42 L.Ed.2d. 293.

Also, Ramachandran submits that a panel of Court of Appeals cannot overrule decision of another panel, nor can one panel disregard precedent, and absent overriding Supreme Court decision or change in statutory law, only court sitting en banc can do this. Washington v. Watkins, 655 F.2d 1346 (C.A. Miss. 1981), rehearing denied 622 F.2d 1116, Cert. denied 102 S.Ct. 2021, 456 U.S. 949, 72 L.Ed.2d 474.

Ramachandran does not know U.S. Supreme Court's position in the matter of conflict-

ing opinions from different panels of the same circuit, whether or not it would interfere. However, if conflicting opinions emanate from the different panels of the same circuit, with one of the members sitting in different panels, even though separated by a period of 25 years, then it is a matter of grave concern. In other words, if the same panel member has one opinion in 1963 (motion for dismissal is not responsive pleading), and in 1988 has diametrically opposite opinion, the U.S. Supreme Court must excercise its supervisory power.

More explicitly, when a lower court, be a federal district court or appellate court, cannot overrule its prior decision, Ramachandran respectfully submits, a judge ALSO cannot overrule his own prior decision. The Supreme Court alone can overrule its prior decisions. McCray v. Burrell, 516 F.2d 357 (C.A. Md. 1975), Cert. granted 96 S.Ct. 264, 423 U.S. 923, 426 U.S. 471,

48 L.Ed 2d 788.

Professor Moore 1/ states,

> The Supreme Court stands at the apex of the judicial system. (footnote 3 omitted) Besides its duty to decide cases within its original and appellate jurisdictions the Court is vested with various supervisory tasks. [] Rule 17 recognizes an additional responsibility -- to ensure that courts of appeals stay within boundaries of "the accepted and usual course of judicial proceedings". If a court of appeals has strayed too far from the course, the Supreme Court may grant certiorari to correct the situation. This is true whether the court of appeals itself has over stepped the boundaries of accepted procedure, or has "sanctioned such a departure by a lower court."

Therefore, "a motion to dismiss" is not a responsive pleading; Ramachandran has a right to amend his complaint prior to a responsive pleading is served. Consequently, Ninth Circuit's decision based on its reliance on improper prior decisions and based on a panel-member's swaying must be reversed.

1/ Moore's Federal Practice, Paragraph 817.27 - Departure from Usual Course of Judicial Proceedings; Court's Power of Supervision.

E. Rule 15(c) F.R.Civ.P. and 42 U.S.C. Sec. 2000e-16(c)

Supreme Court granted certiorari in Schiavone v. Fortune, 477 U.S. __, 91 L.Ed 2d 18, 106 S.Ct. __ (1986), to resolve apparent conflict among federal Courts of Appeals in the application of Rule 15(c) of F.R.Civ.P.

Schiavone deals with a diversity libel action against a major publisher, with headquarters in New York city, under the New Jersey State Statute of limitation of one full year for tort action as opposed to mere 30 days for Title VII cases. U.S. Congress did not impose any time limitation for ADEA cases. The Supreme Court cited several cases from each circuit involving Rule 15(c) decisions, and it chose Cooper v. U.S. Postal Service as an example of recent decision from the Ninth Circuit. It, however, did not select Cooper to evaluate Rule 15(c) with respect to Section 2000e-16(c) of 42 U.S.C.

Supreme Court, when quoting Cooper on its footnote 1, on p.23 (91 L.Ed.2d), was conscious of Ninth Circuit's observance in Cooper that "(w)e recognize that our literal interpretation of Rule 15(c) and the short limitations period established by 42 U.S.C. Section 2000e-16(c) combine to produce seemingly harsh result in this case," and therefore in footnote 2, the Supreme Court made it clear: "No claim is made that Fortune is a separate legal entity with the capacity to be sued."

United States Postal Service, on the other hand, is a separate legal entity with a capacity to sue and be sued. There are several appellate and district court decisions to support this view, and are discussed below under the Issue II.

Further, Rule 12(a) of F.R.Civ.P., requires a defendant other than the United States to answer summons and complaint within 20 days, and for United States or an officer or agency thereof it specifi-

cally allows 60 days. But such similar time distinctions were not imposed upon to serve summons and complaint between U.S. defendant and non-U.S. defendant in Rule 4(j) of F.R.Civ.P.

Rule 4(j) flatly states,

> SUMMONS: TIME LIMIT FOR SERVICE. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such a service was required cannot show good cause why such a service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

If "within 30 days service" were mandatory for U.S. defendants in discrimination cases, Rule 4(j) would have mentioned it clearly, as was done for defendant's answer in Rule 12(a) of F.R.Civ.P. Even a service in a foreign country was not forgotten; therefore it cannot be legislative body's intent that pro se litigants' discrimination complaints must die premature-

ly just because they use well-known name of a service as defendant rather than its head. Further, cases against the United States are not dismissed when its head, the President of United States, is not named as defendant.

Another convincing argument in footnote 4 on p.2 in Schiavone, in dissenting opinion, that "(t)here is no reason why a misnamed defendant is entitled to earlier notice than he would have received had the complaint named him correctly." And, the same footnote continues to provide Professor or Justice Kaplan's comment on anomaly of dismissing an action for delayed service,

> "... We hold that under rule 15(c) the period within which 'the party to be brought in' must receive notice of the action includes the reasonable time allowed under the federal rules for services of process."

Therefore, Schiavone's holding, with divided Supreme Court, with divided Appellate Courts, with divided District Courts,

and with divided legal counsel across the nation, is not applicable to Title VII actions initiated by pro se litigants who are poor job seekers most of the times.

In addition, U.S. Supreme Court discussion in Schiavone concerns the application of rule 15(c) with respect to a statute which has one full year limitation period. Therefore, Plaintiff Ramachandran's case must survive.

II. THE DECISION OF THE NINTH CIRCUIT THAT POSTAL SERVICE CANNOT BE SUED IN ITS OFFICIAL NAME CONFLICTS WITH DECISIONS OF OTHER COURTS INCLUDING U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

A. U.S. Postal Service was sued in other courts

Ramachandran discussed at length in his briefs, about the capacity of United States Postal Service "to sue and be sued in its official name." Ramachandran for his discussion relied on Lutz v. United States Postal Service, 538 F.Supp. 1129, (DC E.D. New York, 1982), and Jarrell v. U.S. Postal

Service, 753 F.2d 1088 (US App. D.C., 1985).

In Lutz, supra, the court held,

> In re-organizing the old cabinet-level Department of the Post Office into present United States Postal Service as independent establishment of the executive branch, 39 U.S.C. Section 201, Congress specifically provided that the Postal Service "shall have" the general power "to sue and be sued in its official name. 39 U.S.C. Section 401(1).

And, in reversing dismissal of pro se litigant's employment discrimination complaint for naming United States Postal Service as defendant, the appeal court stated in Jarrell, supra,

> Failure of a pro se litigant, a federal employee seeking redress for employment discrimination, to name head of agency as proper defendant did not warrant dismissal of action with prejudice; rather, a reasonable amount of time would be allowed to permit amendment of complaint to comply with procedural requirement.

Other courts also reached similar conclusions, and allowed plaintiffs to amend their complaints to name the proper defendants. See, Dodson v. U.S. Army Finance Accounting Center, 636 F. Supp.894 (S.D.

Ind. 1986); Royal v. United States Postal Service, 624 F.Supp. 211 (E.D.N.Y. 1985); and Gonzales v. Dep't of Air Force, 110 F.R.D. 350 (N.D.Texas, 1986).

Important point to note is, in Dodson, U.S. Army Finance Accounting Center and, in Gonzales, Dep't of Air Force, are not legal entities with capacity to be sued; even then courts in both cases were kind enough to let complainants to vindicate their rights.

B. Postal Service is different from other federal agencies.

Except United States Postal Service, no other federal agencies, executive departments, or federal corporations have special capacity like "to sue and be sued."

Further, 39 U.S.C. Section 401 granting the Postal Service "to sue and be sued in its official name," Pub.L. 91-375, August 12, 1970, 84 Stat. 722, was enacted much later than the "Nondiscrimination in Federal Government Employment," Executive Order

No. 11478, dated August 08, 1969, 34 F.R. 12985, in which the law mandated "an applicant for employment [] may file a civil action [] in which the head of the department, agency, or unit, as appropriate, shall be the defendant." If Congress had intended that only the head of Postal Service could be sued, they would have said so, but they did not.

A case in point with regard to statute "to sue and be sued in its official name" for the Postal Service, the court stated in Neal v. U.S. Postal Service, D.C.Utah, 1979, 468 F.Supp. 958, "District court had jurisdiction of claim against the Service for employment discrimination on the basis of physical handicap, if claim was stated, by virtue of sections 1331 and 1339 of Title 28 and this section governing suits by against the Service."

Ramachandran, in his judicial complaint in the lower court at p.2, lines 2-7, and in Plaintiff's Opening Brief, at p.2,

paragraph 3, stated, " Jurisdiction of the District Court was invoked under 28 U.S.C. Sections 1331 (Federal Question), 1339 (Postal Matters), and Postal Service Act, 39 U.S.C. Sections 401(1) and 409(a)." (Ramachandran does not have any physical handicap)

III. THREE FACTORS TO GRANT CERTIORARI

As a final word in the discussion as to why certiorari must be granted, Petitioner Ramachandran wishes to add the following from the book, "The Supreme Court - How It Was, How It Is" by U.S. Supreme Court Chief Justice, Hon. William H. Rehnquist. The author, while discussing how petitions are selected to grant certiorari, states at p.266, "there are really two or three factors comprised in the certiorari decision--Conflict with other courts, general importance, and perception that the decision is wrong in the light of Supreme Court precedent."

The contention in the instant case at the bar satisfies above factors in a way. First, conflict with other courts - there are several decisions supporting one way or another. While some decisions forbid suing the agency itself instead of its head, while several others allow suing the agency. In the case of U.S. Postal Service, courts allowed to sue both Postmaster General, the agency head, and the U.S. Postal Service itself.

This creates ambiguity and confusion even for lawyers. When even lawyers could not decide who is the correct defendant in the case of U.S. Postal Service, as seen in several court decisions across the nation, how can we expect a layman job-seeker to know the correct defendant when there is so much confusion even among the lawyers! And, this situation becomes critical when statute 39 U.S.C. Sections 201 and 401(1) are taken into consideration.

Second, third factor, the perception of

wrong decision - One half of the diametrically opposite decisions are wrong even not viewed in light of U.S. Supreme Court decision. It is simple logic if two decisions are just to opposite to each other, one of them is bound to be wrong. Therefore, U.S. Supreme Court must intervene to clear the ambiguity and confusion.

Third, second factor, general importance - Ramachandran respectfully submits that general importance is a serious factor as far as employment discrimination is concerned. Generally, lawyers do not accept cases involving discrimination in hiring from unemployed job seekers who are often unable to meet financial obligation such as lawyer's fees and court costs. In that case, only "pro-se litigation" is other viable alternative to job seeker to vindicate his fundamental basic rights for his very survival.

According to educational scholars, 27 million Americans cannot read and under-

stand simple English language such as the above paragraph, and 67 million Americans would not be able to respond to the above paragraph in written English. Of course, the 27 and 67 million figures do not include children. We are a nation of about 245 millions with working population of about 120 millions. The figures 27 and 67 million are dismal, indeed, and are on the rise to complicate further. The English language, thus, becomes unusable for a good sizable segment of the population, and that segment keeps growing.

Unfortunately, litigation process involves, even for a layman-pro se litigant, ability to read and understand the legal material, and very importantly the ability to express his arguments, how rudimentary it may be, in written English. Therefore, only handful of discriminatees could ven-

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Generally, see World Almanac & Book of Facts, 1988; Statistical Abstract of the U.S., 1988, U.S. Dep't of Commerce; 60 million people can't read what you write etc., by Candy Schulman, Writer's Digest April 1987.

ture to step into a courtroom on their own to face, usually, hostile environment.

Under these circumstances, the ambiguity and the confusion discussed above, adds to another barrier in "pro-se litigation" process. Therefore, the U.S. Supreme Court must intervene not only to resolve the question, whether or not Postal Service could be sued in its official name, but also for other government agencies and major corporations, whether or not they could be sued in their official name. It is nonsensical to say well known agency such the Department of the Navy cannot be sued in its official name, but only its head can be sued. Even if the Secretary of the Navy is sued, the Secretary himself cannot come and conduct his side of his case, even if he has time for that purpose. Only a lawyer does for him. So, naming the correct defendant is important for lesser know common individuals, and

is critical to avoid miscarriage of justice.

PETITIONER'S OTHER CLAIMS

A. Claims under ADEA

Ramachandran believes that his claim under Age Discrimination in Employment Act of 1967 can be still asserted, and for which Petitioner "MAY have up to six years after the right of action first accrued in which to file a civil action. See Lehman v. Nashian, 435 U.S. 156 (1981); 29 U.S.C. Section 633a(f); and 28 U.S.C. Section 2401(a)." Statement of Appellant's Rights, Notice of Right To File A Civil Action, by Equal Employment Opportunity Commission. See Appendix at page A 10.

In Wiersema v. Tennessee Valley Authority, E.D.Tenn. 1986, 648 F.Supp. 66, the court held,

> Evidence presented factual issue as to whether failure of Tennessee Valley Authority to object to EEOC cover letter sent to federal employee, stating that proceedings for judicial review of EEOC's final decision had to be instituted in federal district court within six years after federal employee's right of action for age discrimination first

accrued, estopped Authority from relying on applicable limitations period to bar federal employee's age discrimination action against authority precluding summary judgment in favor of Authority.

In the instant case, the Postal Service never objected to the EEOC's letter allowing six year time period to commence a civil action, and it is part of Plaintiff's judicial complaint, and also there is a discussion in the Plaintiff's Appellate Brief. Therefore, "relation back period" is not 30 days but full six years from the time of Defendant's rejection of Ramachandran's job application in 1982. Petitioner respectfully submits that it is the function of the Defendant to defend this case against Ramachandran, and the lower courts have to play neutral. Therefore, lower court's summary judgment and subsequent affirmance of the Ninth Circuit is erroneous, and must be reversed.

B. Claims not Cognizable under Title VII & ADEA

Although Title VII is the exclusive

remedy for claims of discrimination in federal employment, preclusive effect extends only to claims of federal employees that are cognizable under Title VII; it does not extend separate remedies for unconstitutional action other than discrimination based on race, sex, religion or national origin. Civil Rights Act of 1964, Sec. 701 et seq., as amended, 42 U.S.C.A. Section 2000e et seq. Kotarski v. Cooper, 799 F.2d 1342 (9th Cir. 1986) (Printer's summary at p.1343). This case was not well developed, and therefore, courts cannot and should not make decisions based on the initial pro se layman's pleadings alone in the judicial complaint. Ramachandran could have elaborated his claims under Sections 1981 and 1983 when the case was progressed from the initial stage, and he had opportunity for doing so. Courts cannot and should not assume what Ramachandran would assert at later stage of the case without affording opportunity for doing so. And, the

Ninth Circuit stated in Lowe v. City of Monrovia, 775 F.2d 998, (CA 9, 1985), "Title VII of Civil Rights Act of 1964 and 42 U.S.C. are overlapping but independent remedies for racial discrimination in employment."

Further, Ninth Circuit's reliance on White v. GSA, 652 F.2d 913 (9th Cir. 1981) is inappropriate in that Mr. White, represented by attorney, asserted all his claims that are cognizable under Title VII. But, Ramachandran's case is different in that this case stood immature without enough facts developed for the court to make legitimate decision on those claims, when summary judgment was rendered.

Further, U.S. Supreme Court stated in Conley v. Gibson, 355 U.S. 41, 48, ___ S.Ct. ___, ___ L.E.2d ___, (1957).

> The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the out come(,) and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

And, U.S. "Supreme Court holds allegations of a pro se complaint to less stringent standard than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652, (1972).

Therefore, Ramachandran's claims under 42 U.S.C. Secs. 1981, 1983, and other constitutional rights claimed, that are not cognizable under Title VII or ADEA, are not barred by the claims under Title VII and ADEA.

CIVIL RIGHTS SUITS ARE OF PUBLIC VALUE

A. Protection must not be Illusion

Summary Judgment is a drastic remedy that must be thoughtfully and cautiously applied. The most precious right available to individuals in this country is the ability to enforce his or her rights in a court of law. The guarantees of law, separated from the right to enforcement, would indeed ring hollow by masking legal reality with the illusion of legal protection.

B. Protection must be reality

> Suits under Title VII are not routine private litigation. On the contrary, they are laden with "heavy overtones of public interest." Jenkins v. United Gas Company, 400 F.2d 28 (CA 5, 1968). It is clear that in relying upon private individuals to seek judicial enforcement of the Civil Rights Act of 1964, Congress neither intended, nor should the courts permit an impoverished "private attorney general," Newman v. Piggie Park Enterprises, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1963), Jenkins v. United Gas Company, supra, to be saddled with procedures which might seriously impede the vindication of the Civil Right Laws. The procedures of Title VII were not intended as "a stumbling block to the accomplishment of the statutory objective." Miller v. International Paper Company, 408 F.2d 283 (CA 5, 1969).

In action under this subchapter, (42 U.S.C. Section 2000e-5), private litigant's right of access to courts must be vigilantly protected; for if court house door closes in his face, enforcement of this subchapter ceases to exist. Sanchez v. Standards Brands, Inc., 431 F.2d 455 (C.A.Tex. 1970).

C. Beyond Prima facie Proof

"McDonnell Douglas framework under which employment discrimination plaintiff must establish prima facie case is inapplicable where plaintiff presents direct evidence of discrimination. Storey v. City of Sparta Police Dep't, 667 F.Supp. 1164, (M.D.Tenn. 1987). See Postal Service's announcement calling applications from 1982 and Recent Graduates. Because of Postal Service's overt and direct discrimination, as evidenced from the job announcement itself, Petitioner Ramachandran not only established his prima facie case, but also established Defendant's discriminatory conduct. Once again, Postal Service's adamant 1982 and Recent Graduates announcement is a slap on the face of the older job seekers; and courts must not shield discriminating employers, even if they happened to be federal agencies, by omitting to consider all relevant arguments of Ramachandran in his lower courts' briefs. And, recently passed laws like, Age Discrimination Claims

Assistance Act of 1988, P.L. 100-283, 102 Stat. 78, dated April 4, 1988, and laws of similar kind will be less useful to older job seekers, if courts condone discriminatory acts of employers.

SUMMARY REVERSAL

Ramachandran makes a special request to this Court, with this paragraph, to decide this case based on this Petition and Respondent's response alone (Ramachandran does not know at this point whether a "reply" has to be filed after Respondent Postal Service serves a response to this petition) without further briefs or oral argument, as was done in United States v. Inderlunas, 411 U.S. 222, Consideration of the petition for certiorari and the response has led us to conclude that further briefs and oral arguments would not materially assist in our disposition of the case and, for the reasons hereafter stated, we grant certiorari and reverse the judgment Court of Appeals(,) and to sum-

marily reverse lower courts' judgments.

CONCLUSION

For the reasons set forth above, the decision of the lower courts should be reversed, and this case must be remanded for appointment of Petitioner Ratinavelu Ramachandran in one of "Industrial Engineers, 1982 and Recent Graduates," with full back pay and other due benefits, and to award all other remedies sought in the complaint, at pp.13 and 14.

Respectfully submitted,

Dt. Jan 12, 1988

Ratinavelu Ramachandran

Petitioner, Pro Se
Post Office Box 6225
Alhambra, CA 91802

Telephone: none

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

RATINAVELU RAMACHANDRAN
Petitioner

v.

UNITED STATES POSTAL SERVICE
Respondent

For a Writ of Certiorari to
The United States Court of Appeals
For the Ninth Circuit

APPENDIX

R. Ramachandran
P.O. Box 6225
Alhambra, CA 91802

PRO SE Petitioner
Telephone: none

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FILED May 26, 1988

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RATINAVELU RAMACHANDRAN
Plaintiff-Appellant
vs.
UNITED STATES POSTAL SERVICE
Defendant-Appellee

No. 87-6028
D.C. No. CV-86-7960

MEMORANDUM*

Appeal from United States District Court for the Central District of California
William D. Keller, District Judge, Presiding

Submitted April 27, 1988**

BEFORE: BROWNING, Chief Judge, HUG and BEEZER, Circuit Judges.

Appellant filed this action against the United States Postal Service alleging he was denied employment because of discrimination based on his race and age in violation of Title VII, the Age Discrimination in Employment Act, and 42 U.S.C. Sections 1981 and 1983. The district court dismissed, and appellant appeals.

The Tile VII and ADEA claims were properly dismissed because appellant failed to name and notify the proper defendant, the Postmaster General, within the jurisdictional limits. See Romain v. Sheer, 799 F.2d 1416, 1419 (9th Cir. 1986)(per curiam); Cooper v. United States Postal Serv., 740 F.2d 714 (9th Cir. 1984). Appellant's amendment did not preserve the claim since Federal Rules of Civil Procedure 15(c) permits the "relation back" of amendments only when there has been actual notice. Cooper v. United States Postal Serv., 740 F2d at 716-17.

Appellant's 42 U.S.C. Sections 1981, 1983 claims were properly dismissed because Title VII provides the exclusive remedy for claims of discrimination in federal employment. See White v. General Service Admin., 652 F.2d 913 (9th Cir. 1981).

AFFIRMED.

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* This disposition is not appropriate for

publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R.36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Circuit Rule 34-4.

FILED Sep 23, 1988

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RATINAVELU RAMACHANDRAN
Plaintiff-Appellant
vs.
UNITED STATES POSTAL SERVICE
Defendant-Appellee

No. 87-6028
D.C. No. CV-86-7960
ORDER

BEFORE: BROWNING, Chief Judge, HUG and BEEZER, Circuit Judges.

The panel has voted to deny the petition for rehearing and reject the suggestion for rehearing en banc. The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b). The petition for rehearing is denied and

the suggestion for a rehearing en banc is rejected.

FILED April 15, 1987

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RATINAVELU RAMACHANDRAN
Plaintiff
vs.
UNITED STATES POSTAL SERVICE
Defendant

No. CV 86-7690-WDK

ORDER RE DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on defendant's Motion to Dismiss. Having reviewed the materials submitted and having reexamined the file and heard the argument of counsel, the Court hereby Orders that the defendant's Motion to Dismiss is GRANTED WITH PREJUDICE.

1. The plaintiff's first claim for relief is for violation of Title VII, 42 U.S.C. Section 2000e-16, which mandates that the "head of the department, agency or unit" is the appropriate defendant. The plain-

tiff erroneously sued the United States Postal Service and not the Postmaster General. Generally, under Federal Rule of Civil Procedure (FRCP) 15, a party can amend his complaint. However, under 15(c) such amendment will relate back only if "within the period provided by law for commencing the action against him" certain statutory conditions have been met.

2. Mr. Ramachandran admits to having received notice of the Office of Review and Appeals decision on October 28, 1986. Under 42 U.S.C. Section 16(c), a party has thirty days after such notification to file a civil action. The 30 day period is time period referenced in FRCP 15(c). Because the plaintiff failed to serve any of the defendants within that 30 day period and since there is no other indication of notice, he is precluded from availing himself of FRCP 15(c). Therefore, his first claim for relief is dismissed with prejudice. This ruling is mandated by the

Ninth Circuit's decision in Cooper v. U.S. Postal Service, 740 F.2d 714 (9th Cir. 1984).

3. The plaintiff confronts the same problem as regards his second claim for relief under the ADEA, 29 U.S.C. Section 633a. The only difference is that the ADEA statute does not specify the proper defendant nor does it specify the time period by which a civil suit must be brought after the denial of an administrative claim. However, in Romain v. Sheer, 799 F.2d 1416 (9th Cir. 1984), the Ninth Circuit held that since the ADEA was patterned after Title VII, when a provision of the ADEA can be traced to a complimentary section of Title VII, the two should be construed consistently. More specifically, the Court held that the proper defendant for an ADEA lawsuit was the same as for Title VII suit, namely the Postmaster General and not the United States Postal Service(s). The same reasoning utilized to reach that

determination can also be applied to borrowing the thirty day time period of Title VII for commencing a civil suit. As discussed earlier, the plaintiff failed to serve any defendant within that thirty day period. Accordingly, his second claim for relief is Dismissed with prejudice.

4. The third and fourth claims for relief are based on 42 U.S.C. Sections 1891, 1983. However, Title VII is the exclusive remedy for discrimination based on race or national origin. White v. General Services Administration, 652 F.2d 913 (9th Cir. 1981). Similarly, the ADEA is the exclusive remedy for age discrimination. Purtill v. Harris, 658 F.2d 134 (3rd Cir. 1981). Therefore, the plaintiff's third and fourth claims for relief are Dismissed with prejudice.

5. Having dismissed each and every claim for relief, it is Ordered that the plaintiff's complaint be dismissed in its entirety with each side to bear their own costs. IT IS SO ORDERED:

DATED: April 15, 1987

(Sd) William D. Keller
United States District Judge

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington, D.C. 20507

Ratinavelu Ramachandran
Appellant
v.
United States Postal Service
Agency

Appeal No. 01862069
Agency No. 6-1-0037-6

DECISION

Appellant filed an appeal with this Commission from a final decision of the agency concerning his complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. Section 621 et seq. The agency decision is dated April 29, 1986. The appeal is postmarked May 14, 1986. Accordingly, the appeal is timely (see 29 C.F.R.

Section 1613.233(a)), and is accepted in accordance with EEOC Order No. 960, as amended. The agency rejected appellant's complaint on the grounds that appellant failed to seek EEO counseling in timely fashion.

A review of the record reveals that appellant alleges that he was discriminated against because he was not selected, in 1983, to a position for which he had applied. EEOC Regulation 29 C.F.R. Section 1613.214(a)(1)(i) requires that complaints of discrimination be brought to the attention of Equal Employment Opportunity Counselor within thirty (30) days of the date of the matter causing appellant to believe he was discriminated against, or if a personnel action, within 30 calendar days of its effective date. Here, the record reflects that appellant first sought EEO counseling on January 14, 1985. Appellant failed to submit adequate justification, pursuant to 29 C.F.R. Section 1613.214(a)

(4), for extending the time limitation beyond thirty days. Accordingly, the agency's decision to reject portions of appellant's complaint as untimely was proper and is AFFIRMED. 29 C.F.R. Section 1613.215. A statement of appellant's rights (R-1) is attached to this decision.

FOR THE COMMISSION
DATE AUG 2X, 19XX (X-not visible)

(sd) Dolores L Rozzi, Director
Office of Review and Appeals

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

STATEMENT OF APPELLANT'S RIGHTS
NOTICE OF RIGHT TO FILE A CIVIL ACTION

You are hereby notified that the attached decision in your case is final. You have the right to file a civil action in the appropriate United States District Court WITHIN THIRTY (30) DAYS from the date that you receive this decision. If any of your claims were based on the Age Discrimination Act of 1967 (29 U.S.C.

Section 633a), AS TO THOSE CLAIMS ONLY, you MAY have up to six years after the right of action first accrued in which to file a civil action. See Lehman v. Nashian, 453 U.S. 156 (1981); 29 U.S.C. Section 633a(f); and 28 U.S.C. Section 2401(a).

APPOINTMENT OF COUNSEL

If you decide to file a civil action and do not have or unable to obtain the services of an attorney to act on your behalf, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq., as amended, and the Rehabilitation Act of 1973, 29 U.S.C. Sections 791 and 794c, as amended, you may request that the Court appoint an attorney to represent you and may also permit you to file the civil action without payment of fees, costs, or security. If you want to request appointment of an attorney, your request must be FILED WITH THE COURT WITHIN THIRTY (30) DAYS from the date that you receive the Commission's decision.

NOTICE OF RIGHT TO REQUEST REOPENING

The Commission may, in their discretion, reopen and reconsider the decision in your case if you submit a written request and argument or evidence which tends to establish that: 1. New and material evidence is available that was not readily available when the previous decision was issued; or 2. The previous decision involves an erroneous interpretation of law or regulation, or misapplication of established policy; or 3. the previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

Your request should be submitted to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Suite 900, Falls Church, Virginia 22041. FILING A REQUEST

TO REOPEN WITH THE COMMISSION MAY NOT EXTEND THE TIME PERIOD ALLOWED FOR FILING A CIVIL ACTION. IF YOU WISH TO PRESERVE YOUR RIGHT TO FILE A CIVIL ACTION, THE CIVIL ACTION SHOULD BE FILED WITHIN THE TIME ALLOWED, EVEN IF YOU DECIDE TO REQUEST REOPENING BY THE COMMISSION.

(sd)Dolores L. Rozzi
Director, Office of Review and Appeals

UNITED STATES POSTAL SERVICE
EQUAL EMPLOYMENT OPPORTUNITY CASE
IN THE MATTER OF

Ratinavelu Ramachandran
Complainant
v.
United States Postal Service
Respondent

Case No. 6-1-0037-6
Filed on February 10, 1986

Certified No. P 317 513 765

This is the Postal Service's final decision on the above-cited complaint. The Complainant alleged discrimination on the bases of race (Asian Indian), national origin (Indian), age (52), concerning not being considered for employment with Postal Service.

The Equal Employment Opportunity Commission (EEOC) complaint-processing regulations, specifically 29 C.F.R. Section 1613.214, require that only those matters presented at the informal level to the EEO counselor within 30 calendar days of their occurrence may be accepted for investigation. In turn, a formal complaint appealing those unresolved matters, presented to the EEO counselor, is timely only if submitted within 15 calendar days of receipt of the Notice of Final Interview.

A review of the EEO Counselor's report discloses that on October 7, 1982, the complainant submitted a resume for the position of Industrial Engineer in Long Beach, California. On November 23, 1982, he submitted an application to the same office for the position of Industrial Engineer/Professional Specialist Trainee. By letter of October 15, 1982, the complainant was notified that applications for the engineering positions were only accep-

ted from employees within the Postal Service. By letter of February 4, 1983, the complainant was notified that he was not successful applicant for the Engineer Trainee position. However, he did not request precomplaint EEO counseling from the Postal Service until January 14, 1985. Thus, his initial request for precomplaint counseling has been determined to be a minimum of approximately two (2) years from the date of incident. Therefore, the matters are untimely pursuant to the EEOC complaint-processing regulations cited above. Accordingly, for the foregoing reasons, and based on the entire record, case No. 6-1-0037-6 is rejected for investigation by the Postal Service.

RIGHT TO FILE A CIVIL ACTION

If the complainant is dissatisfied with this final agency decision, the complainant may file a civil action directly in an appropriate U.S. District Court within 30 calendar days of receipt of this decision

on allegations pertaining to factors other than age, and within the time allowed by the appropriate statute of limitation on allegations pertaining to age.

APPEAL TO THE EEOC

If the complainant is dissatisfied with this final decision, and does not file a civil action at this time, the complainant may appeal to the Equal Employment Opportunity Commission Office of Review and Appeals (ORA), within 20 calendar days of receipt of the decision. The appeal shall be in writing and filed, in duplicate, with the Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, N.W. Washington, D.C. 20507-0001. Failure to file within the 20-day period could result in ORA's rejection of the Appeal. Extension of the time limits and accepting the appeal will be at the discretion of the ORA. Any supporting statement or brief must be submitted, in duplicate, to the ORA within 30 calendar days

of filing the appeal. A copy of the appeal and any supporting documentation must also submitted to the General Manager, Employee Appeals Division, U.S. Postal Service Headquarters, 475 L'enfant Plaza S.W., room 9431, Washington, D.C. 20260-4245. If the complainant files a timely appeal with the ORA, the complainant may file a civil action in an appropriate U.S. District Court within 30 calendar days of receipt of ORA's final decision of allegations pertaining to factors other than age, and may file a civil action pertaining to age in an appropriate U.S. District Court within the time allowed by the appropriate statute of limitations. A civil action may be filed on factors other than age after 180 calendar days of an appeal to the ORA, and they have not rendered a final decision.

Date April 29, 1986

(sd) Mary S. Elcano
Executive Director
Office of Equal Employment Opportunity
Employee Relations Department

ELIG PERIOD - 1 YR. YOU MAY REQUEST 1 YR EXTENSION FROM YOUR PM

POSTAL INSERVICE OR ENTRANCE EXAMINATION

NOTICE OF RATING

NAME	POSTAL INSTALLATION APPLIED FOR	FINAL RATING
RAMACHANDRAN, RATINAVELU	OAKLAND, CA	90.0

STREET ADDRESS	CITY	STATE	ZIP CODE

POSITION TITLE		BASIC RATING	VETERAN POINTS ALLOWED*	ELIGIBLE OR INELIGIBLE
INDUSTRIAL ENGINEER PES-19		90.0	- - -	ELIGIBLE
SOCIAL SECURITY NUMBER	**DATE OF BIRTH**	**INSTALLATION FINANCE NUMBER**	**DATE OF EXAMINATION**	**DATE NAME ENTERED ON REGISTER**
060-46-6889	2-9-33		- - -	OCT 21 1975

FORM 50240
JUL 1975

*ALL COMPETITORS MUST ATTAIN A RATING OF 70 BEFORE VETERAN PREFERENCE POINTS ARE EFFECTIVE
(Applicable only to competitive examinations)

(APPLICANT'S COPY)

CERTIFICATE OF SERVICE

I hereby certify that REVISED (in compliance with Clerk's letter, dated December 21, 1988) copies of Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit and Appendices, in single volume, were mailed (for the second time) on or about January 19, 1989 as follows:

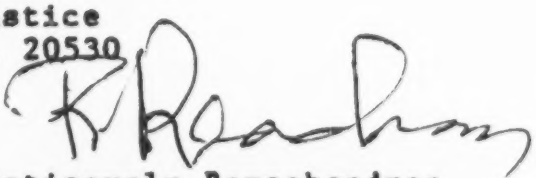
1. Under Certified Mail:

Office of the Clerk, U.S.Supreme Court 1 First Street, N.E. Washington, D.C. 20543	40 copies of Petition and Appendix

2. By First Class Mail, each 3 copies of Petition and Appendix:

Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Solicitor General
Department of Justice
Washington, D.C. 20530



Ratinavelu Ramachandran
Dated: Jan 12, 1989
Petitioner, pro se,
P.O. Box 6225,
Alhambra, CA 91802

Telephone: none

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